IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

WA.No. 848 of 2007()

AGAINST THE JUDGEMENT IN WPC.241/2004 Dated 23/05/2006

APPELLANT: 4TH PETITIONER

N.KUMARAN MASTER,
ANUPAMA, MEENANGADI P.O., MEENANGADI.

BY ADV. SRI.PHILIP M.VARGHESE

RESPONDENTS: RES. 1 TO 3 AND PETITIONERS 1-3 AND 5-8

1. OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

2. THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT (L) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

3. THE SECRETARY, MEENANGADI GRAMA PANCHAYATH, MEENANGADI, WAYANAD DISTRICT.

4. PRASANNA VENUGOPAL, PURAKKODI VEEDU, KARYAMPADI P.O., MEENANGADI VIA.

5. K.V.JOHN, OZHALIL VEEDU, KUMPLERI P.O., MEENANGADI VIA.

6. M.RAGHAVAN, MADUMPATH VEEDU, MAILAMPADI P.O., MEENANGADI VIA.

7. AMBIKA BALAN,
VALIYAKKOLLI VEEDU, CHOOTHUPARA P.O.,
KENICHIRA VIA.

8. SANTHA K. NAIR,
MEKKUNNATHU VEEDU, MEENANGADI P.O., PURAKKADI.

9. DAISY DAVID,
MANGAN VEEDU, KRISHNAGIRI P.O., MEENANGADI VIA.

10. K.KUNJIKANNAN,
KAPPIKUNNU VEEDU, MAILAMPADI P.O.,
MEENANGADI VIA.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 848 OF 2007

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Dated this the 12th June, 2007

J U D G M E N T

H.L. Dattu, C.J.:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 848 OF 2007

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Dated this the 12th June, 2007

J U D G M E N T

H.L. Dattu, C.J.:

This appeal is directed against the judgment of the learned single Judge in W.P.(C) 241 of 2004 dated 23rd May, 2006. By the impugned judgment, the learned single Judge has upheld the orders passed by the Omdudsman and has rejected the Writ Petition.

2. The facts in brief are:

Appeallant was a member of the Grama Panchayat. By resolution dated 25.10.1997, the members of the Grama Panchayat

had awarded a contract for construction of a culvert at 70%, over and above the estimated cost of Rs. 3,20,000/-. The contractor, after the award of contract has completed the work.

3. The Ombudsman being of the opinion that by awarding the aforesaid contract, the Grama Panchayat has suffered a pecuniary loss of a sum of Rs.1,30,063/-, had issued notice to the Panchayat Members. After holding an enquiry, the Ombudsman had come to the conclusion that it is because of the omissions and commissions committed by the members of the Grama Panchayat, including the President and Vice President and had directed them to pay a sum of Rs.1,30,063/- to the Panchayat for the loss caused to the Panchayat. Aggrieved by the orders and directions issued by the Ombudsman, the petitioners in the Writ Petition were before this Court in W.P.(C) 241 of 2004. The learned single Judge by his well considered order has come to the conclusion that the members of the Panchayat including the President and Vice President are responsible for the pecuniary loss caused to the Panchayat.

4. Questioning the correctness or otherwise of the judgment of the learned single Judge, the 4th petitioner in the Writ Petition has filed this Writ Appeal.

5. The appellant's learned counsel would contend before us, that the members of the Grama Panchayat including its President and Vice President are in no way responsible for the pecuniary loss caused to the Panchayat and that if anybody is responsible for such a loss, it is the Secretary of the Grama Panchayat. In support of that contention, the learned counsel invites our attention to Section 182 of the Kerala Panchayat Raj Act, 1994 ('Act' for short).

6. Section 182 of the Act speaks of the powers and functions of the Secretary. The sub-clause (iii) of Section 182 of the Act envisages that the Secretary of the Panchayat shall carry into effect the resolutions of the Panchayat . The proviso appended to it has been substituted by Act 13 of 1999 which has come into effect with effect from 24.03.1999. As per the Act 13 of 1999, the Secretary of the Grama Panchayat is of opinion that any resolution passed by the Panchayat has not been legally passed or is in excess of the powers conferred by this Act or any other Act or is likely, to endanger human life, health or public safety, if implemented, he shall request in writing to the Panchayat, to review the resolution and express his views at the time of its review by the Panchayat and if for any reason, the Panchayat upholds its previous decision , then the matter shall be

referred to the Government after intimation to the President and if no decision is taken by the Government within fifteen days, then the Secretary is expected to implement the resolution passed by the Grama Panchayat.

7. In the instant case, the contractor was awarded with the contract work of construction of a culvert and that was in the month of October, 1997, i.e. much prior to the incorporation of the substituted proviso to the sub-section (iii) of Section 182 of the Act. Before the substitution, the earlier proviso to sub-section(iii) of Section 182 reads as under:

> *"Provided that where the President or the Secretary considers that a resolution has not been legally passed or is in excess of the powers conferred by this Act or that if carried out it is likely to endanger human life or health or the public safety, the President or the Secretary shall refer the matter to the officer authorised by the Government in this behalf and an appeal shall lie from his decision to Government .*"

8. The proviso which was in existence at the time of awarding of contract for the purpose of construction of the culvert, would only state that the President or the Secretary considers that a resolution has not been legally passed or is in excess of the powers

conferred by the Act or that if carried out, it would endanger human life or health or the public safety, then the Secretary shall refer the matter to the officer authorised by the Government in this behalf. It is not a case of the Ombudsman that the resolution has not been legally passed or that the Grama Panchayat has exceeded its power conferred under the Act. The Ombudsman is of the opinion that by awarding the contract at 70% over and above the estimated cost of Rs.3,20,000/-, the Grama Panchayat has suffered a pecuniary loss of Rs. 1,30,063/-. Therefore, in our opinion, the learned counsel for the appellant may not be justified in relying upon sub-section (iii) of Section 182 of the Act. In that view of the matter, we are of the opinion that the learned single Judge was justified in upholding the orders passed by the Ombudsman. In view of the aforesaid reasons, the appeal requires to be rejected and it is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK